

Assembly Bill No. 605

Passed the Assembly August 27, 2010

Chief Clerk of the Assembly

Passed the Senate August 18, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 23396.6 and 25503.56 to the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 605, Portantino. Alcoholic beverages: instructional tasting events.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued. The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

This bill would authorize the department to issue to the holder of any off-sale retail license an instructional tasting license that would allow the licenseholder to allow an authorized licensee, as defined, or designated representative of that licensee, to conduct, on a designated portion of, or contiguous to, an existing licensed premises, an instructional tasting event at which tastes of alcoholic beverages may be served to consumers, as provided. The bill would impose an original fee of \$300 and an annual renewal fee of \$261 for the license, which would be deposited in the Alcohol Beverage Control Fund. Because the violation of a specified provision of the instructional tasting license by a licensee or by a person under 21 years of age is punishable as a misdemeanor, the bill both creates a new crime and expands the definition of an existing crime, thereby creating a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 23396.6 is added to the Business and Professions Code, to read:

23396.6. (a) The department may issue to the holder of an off-sale retail license an instructional tasting license at the premises of the off-sale retail license. An instructional tasting license shall not be issued to any of the following:

(1) Off-sale licensees at locations where motor vehicle fuel is sold, unless the licensee operates a fully enclosed off-sale retail area encompassing at least 10,000 square feet.

(2) Off-sale licensees at locations with a total of less than 5,000 square feet of interior retail space, unless the calendar quarterly gross sales of alcoholic beverages at the licensed location comprise at least 75 percent of the total gross sales of all products sold at the licensed premises. A licenseholder that is issued an instructional tasting license pursuant to this paragraph shall maintain records that separately reflect the gross sales of alcoholic beverages and the gross sales of all other products sold on the licensed premises.

(b) The provisions of Article 2 (commencing with Section 23815) of Chapter 5 and Section 23958.4 shall not apply to the issuance of an instructional tasting license, except that the department may expressly deny the issuance of an instructional tasting license for any premises located in an area of undue concentration of licenses as defined in paragraph (1) of subdivision (a) of Section 23958.4. Notwithstanding paragraph (3) of subdivision (c), the provisions of Article 2 (commencing with Section 23985) and Article 3 (commencing with Section 24011) of Chapter 6 shall apply to the issuance of an instructional tasting license.

(c) Notwithstanding subdivision (a) of Section 23386 and paragraph (3) of subdivision (c) of Section 25612.5, an instructional tasting license authorizes the licenseholder to allow an authorized licensee or the designated representative of an authorized licensee, to conduct an instructional tasting event at which tastes of alcoholic beverages may be served to consumers subject to the following limitations, and the limitations set forth in Section 25503.56:

(1) (A) At all times during an instructional tasting event, the instructional tasting event area shall be separated from the remainder of the off-sale licensed premises by a wall, rope, cable,

cord, chain, fence, or other permanent or temporary barrier. The licenseholder shall prominently display signage prohibiting persons under 21 years of age from entering the instructional tasting event area.

(B) A licenseholder that permits a person under 21 years of age to enter and remain in the instructional tasting event area during an instructional tasting event is guilty of a misdemeanor. Any person under 21 years of age who enters and remains in the instructional tasting event area during an instructional tasting event is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200), no part of which shall be suspended.

(C) The licenseholder shall not permit any consumer to leave the instructional tasting area with an open container of alcohol.

(2) The instructional tasting license shall not authorize the licenseholder to conduct any on-sale retail sales to consumers attending the instructional tasting event.

(3) Unless otherwise restricted, an instructional tasting event may take place between the hours of 10 a.m. and 9 p.m.

(d) Unless the context otherwise requires, the definitions set forth in Section 25503.56 govern the construction of this section.

(e) An applicant for an instructional tasting license under this section shall, at the time of filing the application for the license, accompany the application with a fee of three hundred dollars (\$300). The annual renewal fee for a license issued pursuant to this section shall be two hundred sixty-one dollars (\$261) and shall be subject to subdivisions (c) and (d) of Section 23320. Fees collected pursuant to this section shall be deposited in the Alcohol Beverage Control Fund.

SEC. 2. Section 25503.56 is added to the Business and Professions Code, to read:

25503.56. (a) An authorized licensee, or a designated representative of an authorized licensee acting as an agent of the authorized licensee, may conduct, on the area specified by paragraph (1) of subdivision (c) of Section 23396.6, an instructional tasting event for consumers on the subject of wine, beer, or distilled spirits, including, but not limited to, the history, nature, values, and characteristics of wine, beer, or distilled spirits, and the methods of presenting and serving wine, beer, or distilled spirits.

(1) (A) Except as provided in subparagraph (B), the instructional tasting event may include the serving of alcoholic beverages to an attendee of legal drinking age. An instructional tasting event on the subject of wine or distilled spirits shall be limited to not more than three tastings per person per day. A single tasting of distilled spirits shall not exceed one-fourth of one ounce and a single tasting of wine shall not exceed one ounce. An instructional tasting event on the subject of beer shall be limited to not more than the tasting of eight ounces of beer per person per day. The wine, beer, or distilled spirits tasted shall be limited to the products that are authorized to be sold by the authorized licensee and the licenseholder under its off-sale license.

(B) A beer and wine wholesaler may conduct an instructional tasting event but shall not serve tastes of beer unless the beer and wine wholesaler also holds a beer manufacturer's license, an out-of-state beer manufacturer's certificate, or more than six distilled spirits wholesaler's licenses.

(C) No charge of any sort shall be made for the tastings. Except for the purposes of Section 23985, the serving of tastings shall not be deemed a sale of products pursuant to this division.

(D) A person under 21 years of age shall not serve wine, beer, or distilled spirits at the instructional tasting event.

(E) All tastes shall be served by an employee of the authorized licensee, the designated representative of the authorized licensee, or by an employee of the designated representative of the authorized licensee.

(F) An authorized licensee, or a designated representative of an authorized licensee, shall either supply the wine or distilled spirits to be tasted during the instructional tasting event or purchase the wine or distilled spirits from the licenseholder at the original invoiced cost. An authorized licensee, or a designated representative of an authorized licensee, shall purchase beer to be tasted during the instructional tasting event from the licenseholder at the original invoiced cost.

(G) Any unused wine, beer, or distilled spirits remaining from the tasting shall be removed from the off-sale licensed premises by the authorized licensee or its designated representative.

(2) If the instructional tasting event is conducted by a designated representative of an authorized licensee, the designated representative shall not be owned, controlled, or employed directly

or indirectly by the licenseholder on whose premises the instructional tasting event is held.

(3) An instructional tasting event shall be limited to a single type of alcoholic beverage. For purposes of this paragraph, “type of alcoholic beverage” means distilled spirits, wine, or beer.

(b) For purposes of this section:

(1) “Authorized licensee” means a winegrower, California winegrower’s agent, beer and wine importer general, beer and wine wholesaler, wine rectifier, distilled spirits manufacturer, distilled spirits manufacturer’s agent, distilled spirits importer general, distilled spirits rectifier, distilled spirits general rectifier, rectifier, out-of-state distilled spirits shipper’s certificate holder, distilled spirits wholesaler, brandy manufacturer, brandy importer, California brandy wholesaler, beer manufacturer, or an out-of-state beer manufacturer certificate holder. “Authorized licensee” shall not include an entity that solely holds a combination of a beer and wine wholesale license and an off-sale beer and wine retail license or holds those licences solely in combination with any license not listed in this paragraph.

(2) “Licenseholder” means an off-sale retail licensee issued an instructional tasting license pursuant to Section 23396.6.

(3) “Location” means the total contiguous area encompassed by the off-sale and on-sale licenses.

(c) Notwithstanding subparagraph (E) of paragraph (1) of subdivision (a), a licenseholder may conduct an instructional tasting event that includes the serving of tastings only when an authorized licensee or its designated representative are unable to conduct an instructional tasting event previously advertised pursuant to this section and scheduled by the authorized licensee or its designated representative, provided the licenseholder supplies the wine, beer, or distilled spirits used in the instructional tasting event and provides or pays for a person to serve the wine, beer, or distilled spirits. Instructional tasting events conducted by a licenseholder pursuant to this subdivision are subject to the provisions of this section and Section 23396.6.

(d) No more than one authorized licensee, or its designated representative, may conduct an instructional tasting event that includes the serving of tastes of wine, beer, or distilled spirits at any one individual licensed premises of a licenseholder per day.

(e) A licenseholder that also holds an on-sale beer and wine license, an on-sale beer and wine eating place license, or an on-sale general license shall not allow an authorized licensee, or its designated representative, to conduct an instructional tasting event on the same day and at the same location as any instructional tasting event held pursuant to subdivision (b) of Section 23386, Section 25503.4, subdivision (c) of Section 25503.5, or Section 25503.55.

(f) A licenseholder shall not condition the allowance of an instructional tasting event upon the use of a particular designated representative of an authorized licensee.

(g) (1) In addition to any point of sale advertising or other advertising items allowed under this division or under rules of the department, an authorized licensee or its designated representative, in his or her absolute discretion and with permission of the licenseholder upon whose premises the instructional tasting event will be held, may list in an advertisement to the general public the name and address of the licenseholder, the names of the alcoholic beverages being featured at the instructional tasting event, and the time, date, and location of, and other information about, the instructional tasting event, provided that both of the following apply:

(A) The advertisement does not contain the retail price of the alcoholic beverages.

(B) The listing of the licenseholder's name and address is the only reference to the licenseholder in the advertisement.

(2) Pictures or illustrations of the licenseholder's licensed premises and laudatory references to the licenseholder in these advertisements are not authorized. Nothing in this section shall authorize an authorized licensee or its designated representative to share in the costs, if any, of the licenseholder.

(h) A licenseholder may advertise an instructional tasting event to the general public. The costs of this advertising shall be borne solely by the licenseholder. Advertising permitted by this subdivision includes flyers, newspaper ads, Internet communications, and interior signage.

(i) Except as otherwise provided in this division or rules of the department, no premium, gift, free goods, or other thing of value shall be given away by an authorized licensee or its designated

representative in connection with an instructional tasting event that includes tastings of an alcoholic beverage.

(j) The licenseholder or the authorized licensee or its designated representative are authorized to perform set up and break down of the instructional tasting event area. The authorized licensee or its designated representative may provide, free of charge to the licenseholder, the equipment, materials, and utensils as may be required for use in connection with the instructional tasting event.

(k) (1) A licenseholder shall not require, or enter into a collusive scheme with an authorized licensee or its designated representative to conduct one or more instructional tasting events as a condition of the licenseholder carrying or continuing to carry a brand or brands of the authorized licensee or as a condition for display or other merchandising plan which is based on an agreement to provide shelf space. An authorized licensee or its designated representative shall not require any preferential treatment or benefit from, or enter into a collusive scheme with, a licenseholder as a condition of conducting one or more instructional tasting events, require a licenseholder to carry or continue to carry a brand or brands of the authorized licensee as a condition of conducting one or more instructional tasting events, or condition display or other merchandising plans that are based on agreements for the provision of shelf space on the conducting of one or more instructional tasting events. Any agreement, whether written or oral, entered into by and between a licenseholder and an authorized licensee or its designated representative that precludes the conducting of instructional tasting events on the premises of the licenseholder by any other authorized licensee is prohibited. A licenseholder or authorized licensee, or its designated representative, shall not use an instructional tasting event to circumvent any other requirements of this division.

(2) In addition to any other remedies available under this division, upon a finding by the department of a failure to comply with this subdivision, the department shall suspend the instructional tasting license of the licenseholder and the privilege of the authorized licensee to conduct instructional events for not less than six months but for no more than one year.

(l) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic

beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its express terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor